

**Letter of Findings: 04-20120188**  
**Gross Retail Tax**  
**For 2008, 2009 and 2010**

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**ISSUE**

**I. Not-for-Profit Organization – Gross Retail Tax.**

**Authority:** IC § 6-2.5-5-25; IC § 6-2.5-5-25(a)(3); [45 IAC 2.2-5-55](#); [45 IAC 2.2-5-55\(e\)](#); I.R.C. § 501 (c)(7).

Taxpayer argues that it was entitled to purchase various items of tangible personal property, such as a transponder, trophies, jackets, and tee shirts without paying sales/use tax because it is a non-profit-organization.

**STATEMENT OF FACTS**

Taxpayer is incorporated in the state of Indiana as a not-for-profit corporation and is recognized by the IRS as a Section 501(c)(7) tax exempt organization. Taxpayer promotes racing among youth and young adults by providing a racing facility. According to information provided to the Indiana Department of Revenue ("Department") Taxpayer provides an entertaining atmosphere for members, their families and guests by holding races and keeping its facilities maintained.

Pursuant to an audit by the Department, it was determined that Taxpayer had purchased items of tangible personal property, including, but not limited to, radio batteries, a rechargeable transponder, drainage tile, trophies, jackets, and tee shirts during the audit periods of 2008, 2009, and 2010, but had not paid sales tax on the purchase of those items. The Department therefore issued proposed assessments for sales and use tax and interest for the purchased items. Taxpayer asserts that it is a not-for-profit organization whose purchase of the items qualifies for exemption under [45 IAC 2.2-5-55](#). Taxpayer maintains that it believes the majority of the items on which tax was assessed enables it to fulfill its mission by providing a safe controlled racing environment, and that the community as a whole benefits because non-member racers compete in taxpayer's racing facility.

**I. Not-for-Profit Organization – Gross Retail Tax.**

**DISCUSSION**

Taxpayer asserts that it is a not-for-profit organization and that its purchase of: the transponder, trophies and jackets in 2008, the trophies, plaques, stone and drainage tile in 2009 and the trophies in 2010 all qualify for exemption under IC § 6-2.5-5-25. Taxpayer maintains that its use of these items furthers its exempt purpose by: "encouraging racers to come to the organization and compete in racing, maintaining a safe racing environment and improving the racing facility."

IC § 6-2.5-5-25 states:

(a) Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is an organization described in section 21(b)(1) of this chapter;
- (2) primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose; and
- (3) is not an organization operated predominantly for social purposes.

(b) Transactions occurring after December 31, 1976, and involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is a fraternity, sorority, or student cooperative housing organization described in section 21(b)(1)(A) of this chapter; and
- (2) uses the property or service to carry on its ordinary and usual activities and operations as a fraternity, sorority, or student cooperative housing organization. (Emphasis added).

[45 IAC 2.2-5-55](#) states:

(a) Sales to a qualified not-for-profit organization of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the organization or in raising money for carrying on such purposes are exempt from the gross retail tax.

(b) In order to qualify for the sales tax exemption on purchases, as a qualified not-for-profit organization, the following conditions must prevail:

- (1) The organization must be qualified by being named or described in [IC 6-2.1-3-20](#), [IC 6-2.1-3-21](#), or [IC 6-2.1-3-22](#) which deals with fraternities, sororities, student cooperative housing organizations, etc. This includes not-for-profit organizations organized and operated exclusively for one (1) or more of the following purposes:
  - (A) Religious.
  - (B) Charitable.

- (C) Scientific.
  - (D) Fraternal.
  - (E) Educational.
  - (F) Literary.
  - (G) Civic.
- (2) Also included are the following specifically named not-for-profit organizations:
- (A) Labor unions.
  - (B) Licensed hospitals.
  - (C) Churches.
  - (D) Monasteries.
  - (E) Convents.
  - (F) Cemetery associations.
  - (G) Public schools.
  - (H) Parochial schools.
  - (I) Pension trust.
  - (J) Business leagues.
- (3) The organization is not operated predominantly for social purposes. The article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodging, are not eligible for exemption. Purchases used for social purposes are never exempt.
- (4) The fact that an organization is being exempted by the federal government or by the state of Indiana for income tax purposes does not necessarily mean that a purchase made by the not-for-profit organization is exempt.
- (c) Purchases of tangible personal property by a qualified not-for-profit organization used to raise funds to further the exempt purpose of the organization are exempt even if the resale of such property is not subject to tax. The following are examples:
- (1) A qualified religious organization purchases envelopes which are distributed to members for use in making weekly contributions to the church. The purchase of the envelopes by the church is exempt because the envelopes will be used to raise funds for the qualified not-for-profit organization.
  - (2) A qualified hospital purchases advertising posters to be used in a fundraising drive for the hospital. The purchase of the posters is exempt from the state gross retail tax because the posters will be used to raise funds for the qualified not-for-profit organization.
- (d) Purchases of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the qualified organization are exempt from tax. This exemption will not apply if such property is primarily used for a purpose other than the not-for-profit purpose of the organization. As used in this section, "primarily used in carrying out the not-for-profit purpose" means that the item or service is used more than fifty percent (50[percent]) of the time to further the organization's not-for-profit purpose. The following are examples:
- (1) A religious organization acquired building materials to construct a new church. The purchase of such materials by the church is exempt since the new church will further the not-for-profit purpose of the organization. The fact that the church basement will occasionally be used for social events does not subject the purchase of construction materials to tax.
  - (2) A church sponsors a ski club for its teenage membership. The ski club purchases skis, boots, and poles to be used by the church ski club members on ski trips. These purchases are taxable because the skis, boots, and poles are used primarily to further the social purposes of the ski group and not the exempt purpose of the church.
  - (3) A fraternal lodge operated a golf club, a bowling alley, and a lounge where liquor is served. Purchases of property used in these facilities are taxable because the property is used for a purpose other than the not-for-profit fraternal purpose of the lodge. However, the purchase of ceremonial robes for use in fraternal meetings is exempt because the robes are used to further the not-for-profit purpose of the organization.
  - (4) Sales of meals at medical society meetings are taxable because the meals are provided for the convenience of the organization and its members. Such sales are taxable even when served in conjunction with a meeting which is furthering their not-for-profit purpose.
- (e) A social organization will be deemed to exist for predominantly social purposes if more than fifty percent (50 [percent]) of its expenditures are for, or related to, social activities. Social activities include the following:
- (1) Food and beverage services.
  - (2) Furnishing of sleeping rooms.
  - (3) Club rooms.
  - (4) Lounges.
  - (5) Recreational activities.
  - (6) Any other social activities. (Emphasis added).

Although Taxpayer argues that the purchase of the above listed items qualify for exemption under IC § 6-2.5-5-25, Taxpayer is a social organization and therefore the sale and use of the above listed items are not exempt from sales and use tax.

Taxpayer is recognized by the IRS as a Section 501(c)(7) tax exempt organization. I.R.C. § 501 (c)(7) provides for tax exemption for "Clubs organized for pleasure, recreation and other nonprofitable purposes..." Taxpayer in its protest states that the organization "provide[s] a facility for [racers] to compete and participate in fulfilling the mission of giving these individuals a safe place to race and learn how to compete in a safe and controlled environment." Under IC § 6-2.5-5-25, a taxpayer's transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service is not an organization operated predominantly for social purposes. [45 IAC 2.2-5-55](#)(e) states that a social organization "will be deemed to exist for predominantly social purposes if more than fifty percent (50 [percent]) of its expenditures are for, or related to, social activities." Social activities include the following: (1) food and beverage services; (2) furnishing of sleeping rooms; (3) club rooms; (4) lounges; (5) recreational activities; (6) any other social activities. The Taxpayer provides no evidence to demonstrate that it predominantly operates for other than recreational activities. Because the majority of the activities for which Taxpayer claimed its tax exempt status are recreational, Taxpayer as a not-for-profit entity is classified as an organization operated predominantly for social purposes. Therefore under IC § 6-2.5-5-25(a)(3), Taxpayer would not be permitted to claim tax exemption from sales and use tax.

#### **FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 12/26/2012 by Legislative Services Agency*  
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